



THE PUBLIC SECTOR

Court of appeal slaps down PERB's effort to override citizens' ballot initiative

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Over the last decade, California voters have weighed in on local ballot measures designed to rein in public employee costs (e.g., to reduce retirement benefits under local pension plans or repeal the costly and risky process of "interest arbitration" for labor contracts). Under the guise of protecting the "meet and confer" rights of local public employee unions, the California Public Employment Relations Board (PERB) has subverted the will of the voters on these issues. In this very refreshing case, the 4th District Court of Appeal recently rejected PERB's invalidation of a local Citizens Pension Reform Initiative (CPRI) designed to significantly reform the city of San Diego's pension system.

Unions challenge San Diego measure

The CPRI was initiated and funded by a citizens' group. The city's elected mayor was a prominent public advocate for the CPRI. As mayor, he was also the city's designated labor negotiator. Nonetheless, he and the city maintained that his efforts in support of the CPRI were undertaken as a private citizen, not as a public official. The city employees' unions disagreed, claiming the citizens' group was acting as a "straw man" so the city could avoid meeting and conferring with the unions over the measure.

The initiative garnered enough signatures to be placed on the ballot. The unions then went to PERB, which twice failed to convince a court to take the measure off the ballot. Sixty-five percent of the electorate subsequently voted for the measure.

The unions continued to pursue their charges with PERB, resulting in a decision that the mayor's actions were attributable to the city, and the city therefore should have met and conferred with the unions before the measure was placed on the ballot. As a remedy, PERB ordered the city to essentially undo the election results. The city appealed.

Court of appeal overrules PERB

The court of appeal first rejected PERB's argument that it was required to defer to the board on every issue. Instead, the court noted that PERB has expertise only on labor relations issues, and deference is not required when the board rules on issues outside its area

of expertise. The court then proceeded to categorically reject each aspect of PERB's decision. The court held that the city was not required to meet and confer over a citizens' initiative, and the evidence did not show that the CPRI was a sham initiated by proponents acting as straw men for the mayor or the city.

Since there was no evidence of a sham, the unions and PERB had to prove that the mayor was acting as an "agent" of the city council. Evaluating the arguments independently rather than rubber-stamping PERB, the court rejected all of the board's arguments as to why the mayor was acting as an agent of the city council. The court instead concluded that the mayor had supported the CPRI as a private citizen.

Because the mayor's conduct did not transform the citizens' initiative into a city-initiated ballot measure, the city wasn't required to meet and confer with the unions before the measure was placed on the ballot. *City of San Diego v. Public Employment Relations Board* (California Court of Appeal, 4th District, 4/11/17).

Bottom line

PERB's "expertise" is limited to labor relations issues, and courts should not defer to PERB when it rules on issues outside its area of expertise. Given PERB's proclivity to rule against the voters in election law cases, that is good news.

True citizens' initiatives are not subject to meet-and-confer requirements. If a union believes that a citizen-sponsored initiative is a sham, it must have specific evidence to support its argument. A public official's support of a citizens' initiative—without more—does not implicate the meet-and-confer requirements. However, public officials or managers who wish to openly advocate for such initiatives should seek the advice of their appointed legal counsel to ensure that their activities are consistent with legal requirements.



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PERB and the unions are likely to seek review of this decision by the California Supreme Court. Stay tuned!

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